Metropolitan Transit System

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Policies and Procedures No. 18

SUBJECT: **Board Approval:** 1/18/07

JOINT USE AND DEVELOPMENT OF PROPERTY

PURPOSE:

It is the intention of the MTS to extract the maximum benefits from and utilization of property owned and acquired by the Board consistent with transportation goals and community development objectives.

BACKGROUND:

Technical studies for the South Line and East Urban Corridor indicated that long-term demand was favorable for future joint development activity. The Board supported this conclusion by adopting design criteria that allows for joint development. Joint development of MTS property achieves four major goals:

1. Integration of transportation facilities into existing and proposed developments to meet community needs;

2. Promotion and enhancement of the use of public transportation;

3. Maximization of the recovery of public capital costs and increase of the return on public investment; and

4. Enhancement and protection of the transportation corridor and its environs.

POLICY:

Joint use and development on MTS rights-of-way will be carried out within the following criteria:

1. Projects shall be considered that do not negatively impact present or future public transportation facilities.

Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company.

MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

2. Projects shall be consistent with regional and local community policies and plans.

3. Projects must demonstrate a fiscal benefit to MTS.

4. Selection between projects will be based on those that can demonstrate:

   a. The greatest economic development potential to MTS and the community.

   b. Increased accessibility to public transportation.

   c. Responsiveness to community needs for housing, employment, services, or recreational facilities.

5. Projects are encouraged that provide rest rooms that are available to transit patrons and the general public.

The intent of these criteria is to foster competition and maximize the return to MTS to the fullest extent possible.

GUIDELINES AND PROCEDURES:

A. Project Proposal Evaluation

Development of property initiated by MTS shall use the standard Request for Proposals (RFP) procedure as set forth in the MTS Policy No. 52 as a general guideline for determining the appropriate process for soliciting the development proposal. Specific procedures for solicitation of each development proposal shall be decided by the Chief Executive Officer based on the nature of the development proposal to be solicited. The Chief Executive Officer may also utilize the services of industry professionals to assist in the solicitation process utilizing the procedures set forth in MTS Policy No. 52 to procure those services.

MTS may also receive unsolicited offers for development from private parties or other agencies. Any entity wishing to propose a joint use or joint development project shall present the proposal to the Chief Executive Officer. The Chief Executive Officer and staff, in consultation with local jurisdictions, will analyze the proposal using the guidelines set forth below. Proposal evaluation procedures and guidelines are as follows:

1. Initial Evaluation of Unsolicited Joint Development Proposals

   a. Proposals for joint development shall be submitted to the Chief Executive Officer along with sufficient information to allow MTS staff to adequately evaluate the proposal for further consideration. The proposal should demonstrate compatibility with the goals and development criteria set by the Board.

b. In addition, the proposal shall include information on the entity proposing the development that demonstrates its mission and vision, financial strength, development capability, successful partnerships and projects, and specific experience with transit oriented development.

c. The Chief Executive Officer will review the proposed project with local agencies having jurisdiction in the project area to determine jurisdictional and community acceptance and support.

d. The Chief Executive Officer shall have a minimum of 60 days in which to perform the initial evaluation and make a recommendation to the MTS Board of Directors to either enter into negotiations for an Exclusive Negotiation Agreement (ENA) with the developer, to reject the proposal, or to propose that additional proposals be solicited for the property development. Additional time may be required to make the determination depending on the complexity of the development proposal. The proposing entity will be notified in writing if additional time is required. If the Chief Executive Officer recommends the MTS Board of Directors enter into negotiations for an ENA without soliciting additional proposals, justification shall be presented to the MTS Board demonstrating the reasons why competition is not in the best interest of MTS.

2. Initial Evaluation of MTS-Solicited Development Proposals

The initial evaluation of MTS-solicited development proposals shall be pursuant to Policy No. 52 or by the procedure utilized by the Chief Executive Officer deemed appropriate based on the nature of the development proposal to be solicited. The evaluation criteria for proposals solicited by MTS shall include those used to evaluate unsolicited proposals. The criteria will be incorporated in the RFP process or other selection method utilized by the Chief Executive Officer.

3. Exclusive Negotiation Agreement

Upon authorization of the MTS Board, the Chief Executive Officer shall execute an ENA with the developer for a period of 180 days or such other term that is mutually acceptable to the parties.

a. Requirements of proposer/developer under the ENA:

(1) Developer shall provide the Chief Executive Officer with a non-refundable "good-faith deposit," the amount of which shall be determined by staff based on past experience with similar projects, the total estimated value of the project, the estimated costs of necessary consultants, and the estimated length of negotiations. The amount shall be sufficient to cover reasonable expenses incurred by the

Chief Executive Officer in carrying out the analysis of the proposal including staff costs, consultant experts, legal fees, and other direct and indirect expenses incurred by MTS. Alternatively, staff may recommend a monthly rental fee, in lieu of a nonrefundable, good-faith deposit to compensate MTS for the use of its property during the negotiation period.

(2) Developer shall have 120 days or such other mutually agreed-upon duration to provide the Chief Executive Officer with the following information:

(a) A preliminary site plan showing building layout and dimensions, parking, landscaping, and access.

(b) Environmental analysis documents acceptable to MTS and to any other governmental entity that would require the environmental evaluation to approve the project pursuant to the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA).

(c) Cost estimates and project data for the proposal in sufficient detail to permit adequate financial analysis by the Chief Executive Officer. MTS will seek a return on its investment consistent with the market value of the property as determined by a professional appraiser approved by MTS. The Chief Executive Officer shall also have the latitude to recommend a higher or lower rate of return depending on the input from industry experts and contingent on Board approval.

(d) Evidence of a firm financial plan, including:

1. Evidence of construction financing capability.

2. Evidence of long-term financing capability.

3. Evidence of other financial sources necessary to carry out the project.

4. Financial evidence of similar projects completed within the last five years.

(e) Developer shall provide a written offer to MTS for purchase of land, purchase of lease rights, or other development rights as appropriate to the proposal.

(f) Developer shall provide a written commitment to meet MTS's goals for Disadvantaged and Women's Business Enterprise (DBE and WBE) participation in construction and operation of the project for a federally funded project consistent with current requirements of MTS and federal regulations.

b. Responsibilities of the MTS under the ENA

(1) MTS shall entertain no other development proposals for the land in question during the period of the ENA. The ENA shall serve as proof of control of land for acquiring letters of financial commitment by the developer.

(2) The Chief Executive Officer shall place the good-faith deposit in an interest-bearing account and shall have the right to draw down from the account payment for reasonable expenses incurred by MTS for such items as land and development rights appraisals, materials, data and other information costs, and other administrative costs expended in the evaluation of the proposal, including staff costs, consultant experts services, and legal fees.

(3) MTS shall ensure that an appraisal for the fair market value of the fee interest or lease rights or other development rights appropriate to the project is performed by a professional appraiser approved by MTS at the sole cost to the developer.

(4) After submittal of all pertinent information by the developer, as listed above, to the satisfaction of the Chief Executive Officer, the Chief Executive Officer shall have 60 days or such other agreed-upon term in which to make a recommendation to the MTS Board to terminate the ENA, to request more information, or to enter into negotiations for a Development Agreement with the developer.

(5) If, at the conclusion of the ENA period, the proposal is terminated, the Chief Executive Officer shall return any remaining balance of the good-faith deposit, including any interest accrued thereon to the developer.

(6) If, at the conclusion of the ENA, a Development Agreement is entered into, the remaining balance of the good-faith deposit, including interest accrued thereon, shall be credited to any additional deposits required as a condition of the Development Agreement, the cost of land,

lease, or other development rights conveyed to the developer by the MTS.

c. Extension of ENA

Either the developer or the Chief Executive Officer may request from the MTS Board an extension of the exclusive negotiation period. The MTS Board will determine whether sufficient progress has been made toward fulfillment of the above requirements in its consideration of extension.

4. Conclusion of Joint Development Evaluation Process

The preceding evaluation process culminates in execution of a Development Agreement to expedite project implementation or in termination and elimination of the proposal.

B. Environmental Documents

MTS will be the lead agency in environmental matters as required by local, state, and federal law. The local jurisdiction may be the lead agency upon approval from the MTS Board.

C. Development Agreements

Development agreements shall describe the rights and responsibilities of both parties and shall contain, but not be limited to, the following elements:

1. Identification of the parties to the agreement, including prohibition against change, transfer, or assignment of ownership, management, and/or control of developer.

2. Description of the site including a map. If the subject of the lease is an air space development, placement of supports shall be included on the map.

3. Requirement that the developer must secure all necessary permits and approvals from appropriate local agencies.

4. The terms and conditions of the lease including, but not limited to:

a. Lease price and payment schedule.

b. Conveyance and delivery for possession.

c. Payment of taxes and insurance requirement.

d. Condition of site at time of beginning and end of lease.

e. Financial statement of developer.

f. Hold harmless and indemnity clauses.

g. Limitations of use and terms of lease.

h. Schedule of the MTS approval of all plans and drawings.

5. If the development incorporates a sale of property, the conditions and terms of such sale including, but not limited to:

a. Sale or purchase price and payment schedule.

b. Escrow instructions.

c. Conditions, covenants, restrictions, and other limitations of use as terms of sale.

d. Conveyance and delivery of possession.

e. Form of deed as approved by MTS counsel.

f. Condition of title and insurance of title.

g. Time and place for delivery of deed.

h. Taxes, assessments, and insurance requirements.

i. Condition of site at time of sales.

j. Financial statement of developer.

k. Prohibition of transfer without prior Board approval.

6. The scope of the development of the site including:

a. Schedule for submission of concept, schematic, construction, grading and landscaping plans and drawings.

b. Schedule for local agency and the MTS review, and approval of plans and drawings. The staff review will include but not be limited to:

(1) Design of site and improvements.

(2) Relationship to the urban design of the community both form and scale.

(3) Architectural design and visual continuity.

(4) Effects on railway and transit operations.

(5) Type and quality of building materials.

(6) Energy considerations.

(7) Structure location, height, and lot coverage.

(8) Parking requirements and design.

(9) Streetscape and landscaping.

(10) Vehicular entrance and exit.

c. Schedule of performance.

d. Insurance requirements.

e. Adherence to antidiscrimination, environmental and all other applicable local, state, and federal laws.

7. Failure of either party to perform, including defaults, remedies, and termination by either party.

8. Ownership of improvements constructed on leased land upon the expiration or termination of lease term.

9. Requirements to restore leased property to original condition upon expiration or termination of lease term.

10. Possible performance bond requirements.

11. Any other general or special provisions deemed necessary by the Board.

D. Inventory of Property

MTS shall identify right-of-way property and facilities and keep such inventory current. All property so inventoried shall be analyzed for its availability for joint use or development by either sale or lease. This inventory shall be reviewed by the MTS Board annually. Included in this inventory will be a listing of all agreements and their current status.

Upon direction from the Board, the inventory shall be assessed and prioritized for potential development opportunities. The ranking should consider potential for investment return, strong developer interest, local agency interest, land use compatibility, and complexity of required land use modifications.

E. Use of Revenue

Revenue obtained from joint use and development of property, including concessions and advertising, will be returned to the MTS General Fund for

inclusion in the budget for maintenance, operations, and capital improvement of MTS-owned facilities from which the revenue is generated. Revenue generated from development of property purchased with federal funds will be used by MTS based on approved processes from the federal funding source.

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POLICY.18.JOINT USE & DEV OF PROPERTY
1/18/07

Original Policy approved on 3/8/82.
Policy revised on 12/20/84.
Policy revised on 2/8/96.
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